

RESOLUTION NO. 2018-_____

RESOLUTION OF THE CITY OF KANKAKEE

**RE: AUTHORIZING THE APPROVAL OF THE STIPULATION
REGARDING PUBLIC SAFETY EMPLOYEES ACT BENEFITS (PSEBA)**

It is hereby resolved that the City of Kankakee, through its Mayor and City Council hereby approves and authorizes Stipulation Regarding Public Safety Employees Act Benefits (PSEBA), a copy of which is attached hereto, incorporated by reference and marked as Exhibit 1.

The Mayor and City Clerk of the city of Kankakee are authorized to sign any documents necessary to perfect this action.

DATED this 18th day of June, 2018, pursuant to a roll call vote as follows:

AYES: _____
NAYS: _____
ABSTAIN: _____
ABSENT: _____

Chasity Wells-Armstrong
Mayor, City of Kankakee

ATTEST: _____
Anjanita Dumas,
City Clerk, City of Kankakee

**STIPULATION REGARDING
PUBLIC SAFETY EMPLOYEES ACT BENEFITS (PSEBA)**

THIS stipulation by and between Jeffrey D. Martin (“Martin”) and the City of Kankakee, an Illinois Municipal Corporation, organized and existing under and by virtue to the laws of the State of Illinois (“Kankakee”).

FINDINGS

WHEREAS, “Martin” was employed by “Kankakee” as a police officer and was awarded a line-of-duty pension by the Board of Trustees of the Kankakee Police Pension Fund on October 23, 2017, (copy of decision attached as Exhibit 1); and

WHEREAS, as part of said decision, the Pension Board found that the injury precludes “Martin” from performing full service for the department and further that said injury was suffered in the line-of-duty (page 9 of Exhibit 1); and

WHEREAS, pursuant to the ruling of the Illinois Supreme Court in *KROHE v. BLOOMINGTON*, 789 N.E. 2d 1211 (Ill 2003) it was determined that the term “catastrophic injury” contained in Section 10(a) of PSEBA is synonymous with an injury resulting in a line-of-duty disability pursuant to Section 4-110 of the Illinois Pension Code; and

WHEREAS, the Pension Board further found,

“On August 3, 2015 Applicant was assigned to duty and acting as shift commander for the evening. At approximately 11:53 p.m., Applicant responded to a 911 call reporting a male subject had pulled a gun on the female caller. Applicant made contact with the female caller and obtained a description of the male subject. As applicant pulled up to 372 West Merchant, a male subject matching the description exited the porch and went around the side of the house. Applicant pursued the subject and as he went around the side to the residence, Applicant stepped in some sort of hole or uneven ground and twisted, injuring his right knee. (T. R. 10-12)”;

and

WHEREAS, that finding satisfies Section 10(b) of PSEBA which requires that the injury resulted from are of the following (1) Officer’s response to fresh pursuit; (2) Officer responded to what he reasonably believed to be an emergency; (3) Officer responded to an unlawful act perpetrated by another; or (4) the injury occurred during the investigation of a criminal act; and

WHEREAS, “Kankakee” is bound by the findings of the Pension Board based on the doctrines of Res Judicata and/or Collateral Estoppel; and

WHEREAS, that during the pendency of this proceeding, "Martin" has paid the insurance premiums due for the medical coverage referred to herein in the amount of \$5,956.21 for coverage through May 2018.

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES, as follows:

1. This stipulation incorporates the foregoing findings.
2. "Martin" and all eligible family members are entitled to the medical coverage provided by 5 ILCS 345/1 et seq. ("PSEBA").
3. That the sums of \$5,956.21 is owed to "Martin" directly for money he has personally paid for medical coverage up to and including May 31, 2018.
4. "Kankakee" acknowledges that it is responsible for coverage to "Martin" and all eligible family members thereby covered by "PSEBA" as required by statute.

City of Kankakee, an Illinois
Municipal Corporation

By: _____
Chasity Wells-Armstrong

Jeff Martin

ATTEST: _____
Anjanita Dumas, City Clerk
City of Kankakee

That all evidence admitted in this cause has been fully considered by the Board. That to the extent any evidence, findings and conclusions admitted are in accordance with the findings, conclusions and views as stated herein, the same have been accepted. That to the extent any arguments, evidence, findings and conclusions admitted may be inconsistent with the findings and conclusions as stated herein, the same have been rejected. That to the extent any testimony or evidence is not in accordance with the findings herein, such testimony or evidence has not been credited.

APPLICABLE STATUTORY PROVISIONS

The applicable statutory provisions of the Pension Code provide, as follows:

§3-114.1. Disability pension — Line of duty.

(a) If a police officer as the result of sickness, accident or injury incurred in or resulting from the performance of an act of duty, is found to be physically or mentally disabled for service in the police department, so as to render necessary his or her suspension or retirement from the police service, the police officer shall be entitled to a disability retirement pension equal to the greatest of (1) 65% of the salary attached to the rank on the police force held by the officer at the date of suspension of duty or retirement, (2) the retirement pension that the police officer would be eligible to receive if he or she retired (but not including any automatic annual increase in that retirement pension), or (3) the pension provided under subsection (d), if applicable.

A police officer shall be considered "on duty" while on any assignment approved by the chief of the police department of the municipality he or she serves, whether the assignment is within or outside the municipality. 40 ILCS 5/3-114.1.

§3-115. Certificate of disability.

A disability pension shall not be paid unless there is filed with the board certificates of the police officer's disability, subscribed and sworn to by the police officer if not under legal disability, or by a representative if the officer is under legal disability, and by the police surgeon (if there be one) and 3 practicing physicians selected by the board. The board may require other evidence of disability....40 ILCS 5/3-115.

§5-113. Act of duty.

"Act of duty": Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman. 40 ILCS 5/5-113.



II FINDINGS OF FACT

Based on the preponderance of the evidence contained in the administrative record, the Board makes the following findings of fact:

1. This Board has jurisdiction of the person (Applicant) and subject matter of these proceedings.

2. Applicant was employed as a police officer for the City of Kankakee Police Department and was first assigned to duty on July 6, 1998.² (T.R.15, Exh.1p.1)

3. Applicant is a member in the City of Kankakee Police Pension Fund.

4. On December 20, 2016, Applicant filed his "Application for Disability Pension Benefits", requesting a "line of duty" disability pension, pursuant to 40 ILCS 5/3-114.1 (Exh.1), and in support, has alleged, as follows:

On August 3, 2015 Applicant was assigned to duty and acting as shift commander for the evening. At approximately 11:53 p.m., Applicant responded to a 911 call reporting a male subject had pulled a gun on the female caller. Applicant made contact with the female caller and obtained a description of the male subject. As Applicant pulled up to 372 West Merchant, a male subject matching the description exited the porch and went around the side of the house. Applicant pursued the subject and as he went around the side of the residence, Applicant stepped in some sort of hole or uneven ground and twisted, injuring his right knee. (T.R.10-12).

5. By reason of the aforesaid injury, Applicant was diagnosed with a torn medial meniscus of the right knee. (T.R.11-12)

6. Applicant received the benefit of surgery on December 23, 2015, consisting of a right knee partial medial meniscectomy, performed by Rajeev D. Puri, M.D. (T.R.12, Exh.9p.282-283)

7. Applicant received the benefit of a second surgery on August 10, 2016, consisting of a right knee medial meniscal transplant, performed by Brian J. Cole, M.D. (T.R.12, Exh.5p.22-23)

8. Applicant has limitations consisting of; running, bending and twisting, squatting down and other restrictions as set forth in the record. (T.R.14-15, Exh. 13, 14)

²Date of hire, salary, creditable service and/or benefit computations, are deferred to the Finance Department of the City of Kankakee, in order to assist in the calculations thereof.

9. Pursuant to the applicable provisions of the Illinois Revised Statutes, Police Pension Code (40 ILCS 5/3-115), the Board requested that Applicant be examined by three (3) licensed physicians who specialize in the treatment and examination of the type of injury of which Applicant complains (right knee), namely;

Brian J. Cole
Midwest Orthopaedics at Rush
1611 West Harrison Street
Chicago, IL 60612

Rajeev D. Puri, M.D.
Oak Orthopedics
400 S. Kennedy Drive
Bradley, IL 60915

James B. Boscardin, M.D.
Parkview Orthopaedic Group
7600 College Drive
Palos Heights, IL 60463

10. After consideration of the evidence, herein, the Board has concluded that Applicant suffers from a disability to his right knee, the same which limits his ability to perform full service for the Department. The Board has further found that said disability has resulted from the performance of an "act of duty" which entitles Applicant to a "line of duty" disability pension benefit, pursuant to 40 ILCS 5/3-114.1.

III ANALYSIS

The Police Pension Code (40 ILCS 5/3-101 et seq.) is remedial in nature and such Statute should be liberally construed in favor of the police officer to be benefited. *Board of Trustees v. Department of Insurance* (2nd Dist. 1976), 42 Ill.App.3d 155, 356 N.E.2d 171, *Peifer v. Board of Trustees* (1st Dist. 5th Div.1978), 57 Ill.App.3d 102, 372 N.E.2d 1106, 14 Ill.Dec. 827. Due to their personal knowledge of the peculiar physical and emotional demands of being a police officer, the members of a police pension board are in the best position to determine whether an applicant is disabled from performing full duty or is qualified for benefits. *Sanders v. The Board of Trustees of the City of Springfield Police Pension Fund* (4th D.1983), 112 Ill.App.3d 1087, 445 N.E.2d 501, 68 Ill.Dec. 53.

The burden of proof required to establish the entitlement to a disability pension, falls upon the applicant. *Wall v. Schaumburg Police Pension Board* (1stDist. 1stDiv.1988), 178 Ill.App.3d 438, 533 N.E. 2d 458, 127 Ill.Dec. 586; *Marconi v. Chicago Heights Police Pension Board* (Sup.Ct.2006), 225 Ill.2d 497, 870 N.E.2d 273, 297, 312 Ill.Dec. 208. Thus, the elements

a police officer must prove in order to establish his/her entitlement to "line of duty" benefits under 40 ILCS 5/3-114.1, are set forth as follows:

- (1) he or she is a police officer;
- (2) a sickness, accident or injury was incurred;
- (3) the sickness, accident or injury, incurred in or resulting from the performance of an "act of duty";
- (4) the police officer is found to be physically or mentally disabled for service in the police Department; and
- (5) the disability renders necessary his or her suspension or retirement from the police service.

DISABILITY

The Police Pension Code provides that an applicant must initially establish that he/she is currently disabled from performing full service in the Department and that said disability is, in fact, permanent. 40 ILCS 5/3-114.1, 40 ILCS 5/3-115.

A finding of "disability" is preliminary to the *Board's* consideration of whether or not the alleged sickness, accident or injury incurred in or resulted from the performance of an "act of duty", as required in order to establish entitlement to a "line of duty" disability under 40 ILCS 5/3-114.1.

IME's Provided By Board Selected Physicians

Each physician was provided a "Job Description" setting forth, in detail, the requirements of a police officer for the City of Kankakee Police Department, as may be required for Applicant.

A summary of each physician's expressed opinion is set forth, as follows:

- (A) In his report of February 13, 2017, **BRIAN J. COLE**, related (in part) as follows:

PLAN: Ultimately, this juncture in time, we believe he has achieved maximum medical benefit. He feels like he is plateaued over the past three to four weeks with physical therapy and states that he still has some persistent deficits. He is unable to participate in high-impact loading. He and I have concerns with return to combatives and risk of reinjury or knee exacerbation. He has persistent limitations that may present difficulties with self-defense maneuvers particularly in the field and trying to apprehend suspects....I believe he has had maximal medical benefit. (Exh.13p.1-2)

(B) In his report of June 21, 2017, **RAJEEV D. PURI, M.D.** related (in part) as follows:

It is with reasonable degree of medical certainty that the patient is disabled from the usual duties in his position. A review of his job description has been performed and given his limitations noted by history and examination, he is limited in the ability to perform the duties listed. These limitations are due to the fact that the patient has difficulty with bending knee past 95° which impacts his ability to go up and down stairs. He has problems with kneeling or any work which he is in the low position.... He is limited in his ability to run, jump, or perform any other high impact activity. It is also a fact that the transplanted meniscus is vulnerable to tear and re-injury with greater frequency than its native counterpart. (Exh.14p.1)

(C) **JAMES B. BOSCARDIN, M.D.**, related in his report of August 3, 2017 (in part), as follows:

4. Does the disability exist which prevents the officer from performing full duties in the police department?

ANSWER: Yes. And the nature of that disability is inability to fully bend the knee with flexion just barely to 100 degrees; unable to run; inability to get in and out of a car; pain on uneven surfaces and with any sort of stressful weightbearing. He is unable to defend himself or society....

8. In the event you opine that the officer is in fact disabled, what is the likely cause or causes of the injury?

ANSWER: The cause of this gentleman's problem is the on-the-job injury of 08/03/2015. (Exh.15p.3-4)

Medical records, exhibits and testimony submitted, herein, establish that Applicant suffers from an injury to his right knee, which prevents him from returning to perform "full service" for the Department. (Exh.13, 14, 15)

Illinois case law interpretation of the relevant sections of the Illinois Police Pension Code (i.e. 40 ILCS 5/3-114.1) has repeatedly held that a police officer must be able to perform all duties as required by the Department. Where a sickness, injury or accident has been established and the same limits a police officer's ability to perform all functions as may be required by the Department, the same has been deemed to constitute a permanent disability as set forth under 40 ILCS 5/3-114.1. *Danko v. Board of Trustees of Harvey Pension Board*, (App.1st.D.1992), 240 Ill.App.3d 633, 608 N.E.2d 333, 181 Ill.Dec.260.

ACT OF DUTY

In order to establish entitlement to a "line of duty" disability, the Applicant must demonstrate by a preponderance of the evidence, that said disability was incurred in or resulted from, the performance of an "act of duty".

Although the term "act of duty" is not defined in 40 ILCS 5/3-114.1, interpretative assistance should be directed to 40 ILCS 5/5-113 of the Illinois Pension Code, which defines the term "act of duty", as follows:

Any act of police duty inherently involving special risk, not ordinarily assumed by a citizen in the ordinary walks of life, imposed on a policeman by the statutes of this State or by the ordinances or police regulations of the city in which this Article is in effect or by a special assignment; or any act of heroism performed in the city having for its direct purpose the saving of the life or property of a person other than the policeman. 40 ILCS 5/5-113.

Customary rules of statutory construction and interpretation, mandate that the definition of the term "act of duty" as incorporated under 40 ILCS 5/5-113, should be applied in defining the term "act of duty" as utilized under 40 ILCS 5/3-114.1. *Trettenero v. Aurora*, 268 Ill.App.3d 58, 643 N.E. 2d 1338, 205 Ill.Dec. 731.

Applicant has testified that on August 3, 2015, he was assigned to duty and responded to a 911 call reporting a male subject had pulled a gun on the female caller. Applicant made contact with the female caller and obtained a description of the male subject. As Applicant arrived at 372 West Merchant (City of Kankakee, County of Kankakee, State of Illinois) a male subject matching the description exited the porch and went around the side of the house. Applicant pursued the subject and as he proceeded around the side of the residence, he stepped on uneven ground and twisted, injuring his right knee. (T.R.10-12).

In applying the term "act of duty", the Illinois Supreme Court in the case of *Johnson v. Retirement Board* (1st D.1985), 137 Ill.App.3d 546, 484 N.E.2d 1250, 92 Ill.Dec. 395, held that a pension board must focus on the injured police officer's *capacity* in which he/she was operating at the time of his injury, as opposed to the manner in which the accident occurred. Clearly, in

the instant case, at the time of sustaining his injury, Applicant was assigned to duty and was responding to a 911 call, the same which constituted a unique act of police service.

Therefore, the disability (right knee) which precludes Applicant from performing full service for the Department, was caused by the performance of an "act of duty" as defined by Statute, in order to entitle Applicant to a "line of duty" disability benefit, pursuant to 40 ILCS 5/3-114.1.

IV **CONCLUSION**

The Applicant has met his burden of proof in establishing that he suffers from a disability which limits his ability to perform "full-unrestricted service" for the Police Department. The Board has concluded that Applicant is entitled to a "line of duty" disability pension pursuant to §5/3-114.1 of the Illinois Pension Code (40 ILCS 5/3-114.1).

Applicant shall be required to submit to an annual medical examination, in order to establish his entitlement to continue on disability status, pursuant to the requirements of Section 3-115. 40 ILCS 5/3-115.

ORDER

IT IS THEREFORE ORDERED:

That Applicant's request for a "line of duty" disability pension, pursuant to 40 ILCS 5/3-114.1, is hereby **granted**. That Applicant's benefits, as may be provided pursuant to Statute, shall be paid retroactive to the date of his Application, or the date of his last salary payment from the Department (as defined by applicable law), whichever may be later. Applicant is entitled to a monthly benefit in the amount of \$4,896.33 commencing on February 16, 2017. That Applicant's said benefit is based upon the calculation of pensionable salary as set forth in "Exhibit A", which is attached hereto and made a part hereof.

That in the event Applicant may qualify for any benefits under the Worker's Compensation Act, said benefits under Article 3 of the Police Pension Code, shall be reduced

as may be specifically provided for under the set-off provisions for Worker's Compensation set forth in 40 ILCS 5/3-114.5, or other applicable provision of the Illinois Police Pension Code.


This Board reserves jurisdiction of this cause in order to implement any benefits set-off, as may be provided for under the Police Pension Code or other applicable laws.

THIS IS A FINAL AND REVIEWABLE DECISION. THE APPLICANT, PURSUANT TO ARTICLE 3 OF THE ILLINOIS CODE OF CIVIL PROCEDURE (735 ILCS 5/3-101 ET SEQ.), HAS A RIGHT TO SEEK JUDICIAL REVIEW OF THE BOARD'S DECISION; HOWEVER, A COMPLAINT FOR REVIEW MUST BE FILED WITHIN THIRTY-FIVE (35) DAYS FROM THE DATE THAT A COPY OF THE DECISION SOUGHT TO BE REVIEWED WAS SERVED UPON THE APPLICANT. PLEASE REFER TO THE APPROPRIATE ILLINOIS STATUTE FOR FURTHER REFERENCE.

DATED this 23 day of October, 2017.

**BOARD OF TRUSTEES OF THE KANKAKEE
POLICE PENSION FUND**


President


Secretary

Kankakee City Police Department

Payroll Change Sheet

Name: MARTIN, JEFFREY D

Address: [REDACTED]

SSN: [REDACTED]

Start: 7/6/1998

Rank SGT 15 2

ID 2962

<u>Pay Description</u>	<u>Monthly</u>	<u>Per Pay Period</u>
SERGEANT - 15 YEARS LONG MARTIN J.	7,532.81	3,766.41
Education Differential - Over 18 Hours Sgt/Lts	0.00	0.00
Shift Number: 3	0.00	0.00
N/A	0.00	0.00
N/A	0.00	0.00
Longevity Police 10 Years / Added	0.00	0.00
Resides Outside City	0.00	0.00
Hourly Rate: 43.46	7,532.81	3,766.41

Approved By: _____

Monthly Benefit = \$4896.33

65% of 7532.81

Thursday, August 17, 2017

